

MONTANA LEGISLATIVE HISTORY

Chapter 405 19 75

Bill H _____ S 123

Original bill & history / c

H. Committee on Judiciary

Hearing Date(s) Mar 06 ✓ c

Mar 21 ✓ c

_____ c

_____ c

Date Out Mar 21 ✓ c

S. Committee on Judiciary

Hearing Date(s) Jan 24 ✓ c

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_____ c

_____ c

Jan 24 ✓ c

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____

Report _____

1 Senate BILL NO. 123
2 INTRODUCED BY Robert Cetrone
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT WHICH PROVIDES
5 DEFINITIONS OF SEXUAL CRIMES, BY ADDING A DEFINITION OF THE
6 TERM "WITHOUT CONSENT"; AMENDING SECTIONS 94-2-101 AND
7 94-5-501, R.C.M. 1947."
8

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Section 94-2-101, R.C.M. 1947, is amended
11 to read as follows:

12 "94-2-101. General definitions. Unless otherwise
13 specified in the statute all words will be taken in the
14 objective standard rather than in the subjective.

15 (1) "Acts" has its usual and ordinary grammatical
16 meaning and includes any bodily movement, any form of
17 communication, and, where relevant, includes a failure or
18 omission to take action.

19 (2) "Another" means a person or persons as defined in
20 this code other than the offender.

21 (3) "Administrative proceeding" means any proceeding
22 the outcome of which is required to be based on a record or
23 documentation prescribed by law, or in which a law or a
24 regulation is particularized in its application to an
25 individual.

1 (4) "Benefit" means gain or advantage, or anything
2 regarded by the beneficiary as gain or advantage, including
3 benefit to any other person or entity in whose welfare he is
4 interested, but not an advantage promised generally to a
5 group or class of voters as a consequence of public measures
6 which a candidate engages to support or oppose.

7 (5) "Bodily injury" means physical pain, illness or any
8 impairment of physical condition and includes mental illness
9 or impairment.

10 (6) "Cohabit" means to live together under the
11 representation of being married.

12 (7) "Common scheme" means a series of acts or omissions
13 motivated by a purpose to accomplish a single criminal
14 objective, or by a common purpose or plan and which resulted
15 in the repeated commission of the same offense or affects
16 the same person or the same persons or the property thereof.

17 (8) "Conduct" means an act or series of acts, and the
18 accompanying mental state.

19 (9) "Conviction" means a judgment of conviction or
20 sentence entered upon a plea of guilty or upon a verdict or
21 finding of guilty of an offense, rendered by a legally
22 constituted jury or by a court of competent jurisdiction
23 authorized to try the case without a jury.

24 (10) "Correctional institution" means the state prison,
25 county or city jail, or other institution for the

INTRODUCED BILL

1 incarceration or custody of persons under sentence for
2 offenses or awaiting trial or sentence for offenses.

3 (11) "Deception" means knowingly to:

4 (a) create or confirm in another an impression which is
5 false and which the offender does not believe to be true; or

6 (b) fail to correct a false impression which the
7 offender previously has created or confirmed; or

8 (c) prevent another from acquiring information
9 pertinent to the disposition of the property involved; or

10 (d) sell or otherwise transfer or encumber property,
11 failing to disclose a lien, adverse claim, or other legal
12 impediment to the enjoyment of the property, whether such
13 impediment is or is not of value or is not a matter of
14 official record; or

15 (e) promise performance which the offender does not
16 intend to perform or knows will not be performed. Failure to
17 perform standing alone is not evidence that the offender did
18 not intend to perform.

19 (12) "Defamatory matter" means anything which exposes a
20 person or a group, class or association to hatred, contempt,
21 ridicule, degradation or disgrace in society, or injury to
22 his or its business or occupation.

23 (13) "Deprive" means to withhold property of another:

24 (a) permanently; or

25 (b) for such a period as to appropriate a portion of

1 its value; or

2 (c) with the purpose to restore it only upon payment of
3 reward or other compensation; or

4 (d) to dispose of the property and use or deal with the
5 property so as to make it unlikely that the owner will
6 recover it.

7 (14) "Deviate sexual relations" means sexual contact or
8 sexual intercourse between two (2) persons of the same sex,
9 or any form of sexual intercourse with an animal.

10 (15) "Felony" means an offense in which the sentence
11 imposed upon conviction is death or imprisonment in the
12 state prison for any term exceeding one (1) year.

13 (16) "A frisk" is a search by an external patting of a
14 person's clothing.

15 (17) "Forcible felony" means any felony which involves
16 the use or threat of physical force or violence against any
17 individual.

18 (18) "Government" includes any branch, subdivision or
19 agency of the government of the state or any locality within
20 it.

21 (19) "Harm" means loss, disadvantage or injury, or
22 anything so regarded by the person affected, including loss,
23 disadvantage or injury to any person or entity in whose
24 welfare he is interested.

25 (20) "He, she, it." The singular term shall include the

plural and the masculine gender the feminine except where a particular context clearly requires a different meaning.

(21) "A house of prostitution" means any place where prostitution or promotion of prostitution is regularly carried on by one (1) person under the control, management or supervision of another.

(22) "Human being" means a person who has been born and is alive.

(23) "An illegal article" is an article or thing which is prohibited by statute, rule, regulation or order from being in the possession of a person subject to official detention.

(24) "Inmate" means a person who engages in prostitution in or through the agency of a house of prostitution.

(25) "Intoxicating substance" means any substance having an hallucinogenic, depressant, stimulating, or narcotic effect, taken in such quantities as to impair mental or physical capability including but not limited to any beverage containing one-half of one per centum (1/2 of 1%) or more of alcohol by volume; provided, that the foregoing definition shall not extend to dealcoholized wine, nor to any beverage or liquid produced by the process by which beer, ale, port or wine is produced, if it contains less than one-half of one per centum (1/2 of 1%) of alcohol

by volume.

(26) "An involuntary act" means any act which is:

(a) a reflex or convulsion; or

(b) a bodily movement during unconsciousness or sleep;

or

(c) conduct during hypnosis or resulting from hypnotic suggestion; or

(d) a bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.

(27) "Juror" means any person who is a member of any jury, including a grand jury, impaneled by any court in this state in any action or proceeding or by any officer authorized by law to impanel a jury in any action or proceeding. The term juror also includes a person who has been drawn or summoned to attend as a prospective juror.

(28) "Knowingly"--A person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when he is aware of his conduct or that the circumstance exists. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person is aware of a high probability of its existence. Equivalent terms such as "knowing" or "with knowledge" have the same meaning.

(29) "Mentally defective" means that a person suffers

1 from a mental disease or defect which renders him incapable
2 of appreciating the nature of his conduct.

3 (30) "Mentally incapacitated" means that a person is
4 rendered temporarily incapable of appreciating or
5 controlling his conduct as result of the influence of an
6 intoxicating substance.

7 (31) "Misdemeanor" means an offense in which the
8 sentence imposed upon conviction is imprisonment in the
9 county jail for any term, or fine, or both or the sentence
10 imposed is imprisonment in the state prison for any term of
11 one year or less.

12 (32) "Negligently"--A person acts negligently with
13 respect to a result or to a circumstance described by a
14 statute defining an offense when he consciously disregards a
15 risk that the result will occur or that the circumstance
16 exists; or if he disregards a risk of which he should be
17 aware that the result will occur or that the circumstance
18 exists. The risk must be of such a nature and degree that to
19 disregard it involves a gross deviation from the standard of
20 conduct that a reasonable person would observe in the
21 actor's situation. Gross deviation means a deviation that is
22 considerably greater than lack of ordinary care. Relevant
23 terms such as "negligent" and "with negligence" have the
24 same meaning.

25 (33) "Obtain" means:

1 (a) in relation to property, to bring about a transfer
2 of interest or possession, whether to the offender or to
3 another; and

4 (b) in relation to labor or services, to secure the
5 performance thereof.

6 (34) "Obtains or exerts control" includes but is not
7 limited to the taking, carrying away, or the sale,
8 conveyance, or transfer of title to, or interest in, or
9 possession of property.

10 (35) "Occupied structure" means any building, vehicle
11 or other place suited for human occupancy or night lodging
12 of persons or for carrying on business, whether or not a
13 person is actually present. Each unit of a building
14 consisting of two (2) or more units separately secured or
15 occupied is a separate occupied structure.

16 (36) "Offender" means a person who has been or is
17 liable to be arrested, charged, convicted or punished for a
18 public offense.

19 (37) "Offense" means a crime for which a sentence of
20 death or of imprisonment or fine is authorized. Offenses are
21 classified as felonies or misdemeanors.

22 (38) "Official detention" means imprisonment which
23 resulted from a conviction for an offense, confinement for
24 an offense, confinement of a person charged with an offense,
25 detention by a peace officer pursuant to arrest, detention

1 for extradition or deportation, or any lawful detention for
2 the purpose of the protection of the welfare of the person
3 detained or for the protection of society; but "official
4 detention" does not include supervision of probation or
5 parole, constraint incidental to release on bail, or an
6 unlawful arrest unless the person arrested employed physical
7 force, a threat of physical force, or a weapon to escape.

8 (39) "Official proceeding" means a proceeding heard or
9 which may be heard before any legislative, judicial,
10 administrative or other governmental agency or official
11 authorized to take evidence under oath, including any
12 referee, hearing examiner, commissioner, notary or other
13 person taking testimony or deposition in connection with
14 such proceeding.

15 (40) "Other state" means any state or territory of the
16 United States, the District of Columbia and the Commonwealth
17 of Puerto Rico.

18 (41) "Owner" means a person, other than the offender,
19 who has possession of or any other interest in the property
20 involved, even though such interest or possession is
21 unlawful, and without whose consent the offender has no
22 authority to exert control over the property.

23 (42) "Party official" means a person who holds an
24 elective or appointive post in a political party in the
25 United States by virtue of which he directs or conducts, or

1 participates in directing or conducting party affairs at any
2 level of responsibility.

3 (43) "Peace officer" means any person who by virtue of
4 his office or public employment is vested by law with a duty
5 to maintain public order or to make arrests for offenses
6 while acting within the scope of his authority.

7 (44) "Pecuniary benefit" is benefit in the form of
8 money, property, commercial interests or anything else the
9 primary significance of which is economic gain.

10 (45) "Person" includes an individual, business
11 association, partnership, corporation, government, or other
12 legal entity, and an individual acting or purporting to act
13 for or on behalf of any government or subdivision thereof.

14 (46) "Physically helpless" means that a person is
15 unconscious or is otherwise physically unable to communicate
16 unwillingness to act.

17 (47) "Possession" is the knowing control of anything
18 for a sufficient time to be able to terminate control.

19 (48) "Premises" includes any type of structure or
20 building and any real property.

21 (49) "Property" means anything of value. Property
22 includes, but is not limited to, real estate, money,
23 commercial instruments, admission or transportation tickets,
24 written instruments representing or embodying rights
25 concerning anything of value, labor, or services, or

1 otherwise of value to the owner; things growing on or
 2 affixed to, or found on land, or part of or affixed to any
 3 building; electricity, gas and water; birds, animals and
 4 fish, which ordinarily are kept in a state of confinement;
 5 food and drink, samples, cultures, microorganisms,
 6 specimens, records, recordings, documents, blueprints,
 7 drawings, maps, and whole or partial copies, descriptions,
 8 photographs, prototypes or models thereof, or any other
 9 articles, materials, devices, substances and whole or
 10 partial copies, descriptions, photographs, prototypes, or
 11 models thereof which constitute, represent, evidence,
 12 reflect or record secret scientific, technical,
 13 merchandising production or management information, designed
 14 process, procedure, formula, invention or improvement.

15 (50) "Property of another" means real or personal
 16 property in which a person other than the offender has an
 17 interest which the offender has not authority to defeat or
 18 impair, even though the offender himself may have an
 19 interest in the property.

20 (51) "Public place" means any place to which the public
 21 or any substantial group thereof has access.

22 (52) "Public servant" means any officer or employee of
 23 government, including but not limited to, legislators,
 24 judges, and firemen, and any person participating as a
 25 juror, advisor, consultant, administrator, executor,

1 guardian or court-appointed fiduciary; but the term does not
 2 include witnesses. The term public servant includes one who
 3 has been elected or designated to become a public servant.

4 (53) "Purposely"--A person acts purposely with respect
 5 to a result or to conduct described by a statute defining an
 6 offense if it is his conscious object to engage in that
 7 conduct or to cause that result. When a particular purpose
 8 is an element of an offense, the element is established
 9 although such purpose is conditional, unless the condition
 10 negatives the harm or evil sought to be prevented by the law
 11 defining the offense. Equivalent terms such as "purpose" and
 12 "with the purpose" have the same meaning.

13 (54) "Serious bodily injury" means bodily injury which
 14 creates a substantial risk of death or which causes serious
 15 permanent disfigurement, or protracted loss or impairment of
 16 the function or process of any bodily member or organ and
 17 includes serious mental illness or impairment.

18 (55) "Sexual contact" means any touching of the sexual
 19 or other intimate parts of the person of another for the
 20 purpose of arousing or gratifying the sexual desire of
 21 either party.

22 (56) "Sexual intercourse" means penetration of the
 23 vulva, anus or mouth of one person by the penis of another
 24 person, or penetration of the vulva or anus of one person by
 25 any body member of another person or penetration of the

vulva, or anus of one person by any foreign instrument or object manipulated by another person for the purpose of arousing or gratifying the sexual desire of either party. Any penetration, however slight, is sufficient.

(57) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to commit an offense.

(58) "State" or "this state" means the state of Montana, and all the land and water in respect to which the state of Montana has either exclusive or concurrent jurisdiction, and the air space above such land and water.

(59) "Statute" means any act of the legislature of this state.

(60) "Stolen property" means property over which control has been obtained by theft.

(61) "A stop" is the temporary detention of a person that results when a peace officer orders the person to remain in his presence.

(62) "Tamper" means to interfere with something improperly, meddle with it, make unwarranted alterations in its existing condition, or deposit refuse upon it.

(63) "Threat" means a menace, however communicated to:

(a) inflict physical harm on the person threatened or any other person or on property; or

(b) subject any person to physical confinement or

restraint; or

(c) commit any criminal offense; or

(d) accuse any person of criminal offense; or

(e) expose any person to hatred, contempt or ridicule;

or

(f) harm the credit or business repute of any person;

or

(g) reveal any information sought to be concealed by the person threatened; or

(h) take action as an official against anyone or anything, or withhold official action, or cause such action or withholding; or

(i) bring about or continue a strike, boycott, or other similar collective action if the property is not demanded or received for the benefit of the groups which he purports to represent; or

(j) testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

(64) (a) "Value" means the market value of the property at the time and place of the crime, or if such cannot be satisfactorily ascertained, the cost of the replacement of the property within a reasonable time after the crime. If the offender appropriates a portion of the value of the property, the value shall be determined as follows:

(i) The value of an instrument constituting an evidence of debt, such as a check, draft or promissory note, shall be deemed the amount due or collectible thereon or thereby, such figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied.

(ii) The value of any other instrument which creates, releases, discharges, or otherwise affects any valuable legal right, privilege or obligation shall be deemed the amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(b) When it cannot be determined if the value of the property is more or less than one hundred fifty dollars (\$150) by the standards set forth in subsection (64) (a) above, its value shall be deemed to be an amount less than one hundred fifty dollars (\$150).

(c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.

(65) "Vehicle" means any device for transportation by land, water or air, or mobile equipment with provision for transport of an operator.

(66) "Weapon" means any instrument, article or

substance which, regardless of its primary function, is readily capable of being used to produce death or serious bodily injury.

(67) "Witness" means a person whose testimony is desired in any proceeding or in any investigation by a grand jury or in a criminal action, prosecution or proceeding."

~~(68) "Without consent" means:~~

~~(a) the victim is compelled to submit by force or by threat of imminent death, bodily injury, or kidnaping, to be inflicted on anyone; or~~

~~(b) the victim is incapable of consent because he is:~~

~~(i) mentally defective or incapacitated; or~~

~~(ii) physically helpless; or~~

~~(iii) less than sixteen (16) years old.~~

Section 2. Section 94-5-501, R.C.M. 1947, is amended to read as follows:

"94-5-501. Definitions. (1) In this part, unless a different meaning plainly is required, the definitions given in chapter 2, 94-2-101 apply.

(2) As used in sections 94-5-503 and 94-5-505 the term "without consent" means:

(a) the victim is compelled to submit by force or by threat of imminent death, bodily injury, or kidnaping to be inflicted on anyone; or

(b) the victim is incapable of consent because he is:

- 1 (i) mentally defective or incapacitated; or
- 2 (ii) physically helpless; or
- 3 (iii) less than sixteen (16) years old."

-End-

SB123

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
JANUARY 24, 1975

The meeting was called to order by Senator Towe, Chairman, at 9:36 a.m. in Room 442 of the Capitol Building.

The following bills were heard: SB 80
SB 120
SB 121
SB 122
SB 123
SB 124

SB 80 Senator Flynn, from District 48 and sponsor of the bill, introduced Robert Deschamps, Missoula County Attorney, who drafted the bill.

Mr. Deschamps stated this bill is patterned after statutes in thirteen states with primary work being done in liaison with the King County, Seattle, Washington, County Attorney's office. He said the bill provides for an investigative subpoena and also selective immunity based on testimony given. He gave two examples of cases where this bill would have aided greatly in investigation and prosecution of white collar crime.

SB 120 Senator Roberts, from District 11 and sponsor of the bill,
121 stated this package of bills was drawn up to correct some
122 oversights in the 1973 Criminal Code which could have
123 some negative results in interpretation and/or appeals.
124

Professor Larry M. Elison, University of Montana Law School presented testimony on the bills. His written statement is attached.

The hearing was closed and the Committee went into Executive Session.

SB 120 SENATOR TURNAGE MOVED SB 120 DO PASS. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

SB 121 SENATOR TURNAGE MOVED CONSIDERATION OF SB 121 BE PASSED FOR THE DAY FOR THE PURPOSE OF FURTHER DISCUSSION. THE MOTION CARRIED.

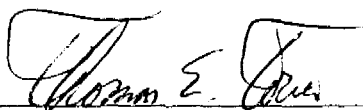
SB 122 SENATOR TURNAGE MOVED SB 122 DO PASS. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

MINUTES OF THE MEETING
PAGE 2

SB 123 SENATOR TURNAGE MOVED SB 123 DO PASS. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

SB 124 SENATOR TURNAGE MOVED SB 124 DO PASS. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

There being no further business, the meeting adjourned to reconvene Saturday, January 25, 1975, at 9:30 a.m.



CHAIRMAN

ROLL CALL

Judiciary COMMITTEE

44th

~~x~~SECOND~~x~~HALF - ~~43rd~~ LEGISLATIVE SESSION 1975

Date 1/24/75

NAME	PRESENT	ABSENT	EXCUSED
Thomas E. Towe	X		
Joe R. Roberts	X		
V. E. Cetrone	X		
Margaret S. Warden	X		
Robert J. Brown	X		
Glen L. Drake	X		
Jean A. Turnage	X		
Michael Greely	X		

SB BILL NO. 123

INTRODUCED BY _____

94-2-101 (68), 94-5-401

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 94-5-501, R.C.M. 1947 WHICH PROVIDES DEFINITIONS OF SEXUAL CRIMES, BY ADDING A DEFINITION OF THE TERM 'WITHOUT CONSENT,' AND REPEALING SUBSECTION (68) OF SECTION 94-2-101 R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. Section 94-5-501, R.C.M. 1947 is amended to read:

"94-5-501. Definitions. (1) In this part, unless a different meaning plainly is required, the definitions given in chapter 2, 94-2-101 apply.

(2) As used in Sections 94-5-503 and 94-5-505 the term 'without consent' means:

(a) the victim is compelled to submit by force or by threat of imminent death, bodily injury, or kidnaping to be inflicted on anyone; or

(b) the victim is incapable of consent because he is:

(i) mentally defective or incapacitated; or

(ii) physically helpless; or

(iii) less than sixteen (16) years old."

Section 2. Subsection (68) of Section 94-5-101, R.C.M. 1947 is repealed.

EXPLANATION

One of the objects and the most distinctive features of the Criminal Code of 1973 was to provide a definition of every crucial term employed so that the full, complete, and accurate meaning of each section could be determined without the necessity of going to sources outside the Code or using up time and money to seek judicial interpretation of disputed language.

For the most part this object has been fulfilled. However, through clerical or drafting errors a few definitions have not been restricted to only those cases to which they were intended to apply. Subsection (68) of Section 94-5-101 was intended by the Code Commissioners to apply only to specific sex crimes; sexual intercourse without consent and deviate sexual intercourse. This definition should have been placed in part five of Chapter 5 which deals with sex crimes, and its meaning restricted to those sections. The definition was erroneously placed in the general definition section, Section 94-2-101, and might thereby be construed to apply throughout the entire Code.

Subsection (68) defines "without consent" as meaning only that the victim is forced to submit by force or threat or is legally incapable of consent because of age or physical or mental incapacity. This is what the term has always meant in the field of sex crimes. The term "without consent," however, is used in a number of other places in the Code and is intended in those instances to have its ordinary meaning--an act done without permission of the owner or another person with some right in the property. If subsection (68)

were to apply in these cases it would render such statutes as those prohibiting the unauthorized use of another person's motor vehicle completely meaningless.

The intent of this amendment is to remove the restrictive definition of "without consent" from the general definition section and place it in part five of Chapter 5 where it belongs, thereby restricting its meaning to the two specified sex crimes. The term "without consent" will then have its usual and ordinary meaning in all of the other cases where that meaning is necessary and intended.

"Without consent" is used in the sense of "lacking permission" in all of the following statutes and the restrictive meaning of subsection (68) of 94-2-101 would seriously hamper, if not entirely defeat, their effectiveness:

94-5-502	- -	Sexual assault
94-6-102 (a) and (b)	- -	Criminal mischief
94-6-104 (a)	- -	Arson
94-6-304	- -	Theft of labor or services
94-6-305	- -	Unauthorized use of a motor vehicle
94-6-307 (d) (i)	- --	Deceptive practices
94-7-307 (2) (a)	- -	Unauthorized communication
94-8-111 (2)	- -	Criminal defamation

This amendment will prevent any possible confusion and make all of the above statutes fully enforceable as the Criminal Law Commission and the Legislative Assembly fully intended.

SENATE COMMITTEE JUDICIARY

Date January 24, 1975 Senate Bill No. 123 Time

NAME	YES	NO
THOMAS E. TOWE	X	
JOE R. ROBERTS	X	
V.E. CETRONE	X	
MARGARET S. WARDEN	X	
ROBERT J. BROWN	X	
GLEN L. DRAKE	X	
JEAN A. TURNAGE	X	
MICHAEL GREELY	X	

Bill Robyans
Secretary

/s/ Thomas E. Towe
Chairman

Motion: by Senator Turnage that SB 123 DO PASS.

(include enough information on motion--put with yellow copy of committee report.)

Representative Halvorson stated that many states are addressing this problem and questioned which ones were studies in drafting this bill and was told that section 5 comes from Michigan and Washington laws with language modified to conform to Montana Codes.

Representative Meloy questioned why the exception to prior sexual conduct of victim in subsection (b) and was told that if a test of pregnancy or semen present, this is very strong evidence and can point to an offender. It narrows it to specifics. Representative Moore questioned if subsections (a) and (b) are exclusive as to when types of evidence are deemed relevant and was told yes. He then suggested framing this in general language to the effect that if relevant the evidence should be admissible. Following brief additional discussion the hearing was closed.

Chairman Huennekens had to leave and Representative Meloy took over as acting chairman.

SENATE BILL NO. 294 Senator Pat Regan, District #31, is chief sponsor of this act redefining the offense of prostitution to include both the payer and the recipient of payment. She stated that previously with this one half of the criminal party was penalized and the other half was not. In the interim study some laws were better removed from the books, in this case they are asking legislature to enact legislation which will bring Montana law into conformity.

No proponents. No opponents. No closing.

Representative Halvorson questioned how this bill could be enforced. Senator Regan stated that if the party was a police woman you might get a conviction. Hearing was then closed.

SENATE BILL NO. 123 Senator Joe Roberts, District #11, is chief sponsor of this act which provides definitions of sexual crimes by adding a definition of the term "without consent". He stated this is one of a package of bills to amend the criminal codes. It is the work of professors Crowley and Elison. Amendatory language is found on pages 16 and 17 and it ties down the meaning of the term "without consent", ties definition to specific crimes. It tightens up the definitions.

No proponents. No opponents. Representative Yardley questioned that the language was not changed to which Senator Roberts replied no, it just ties to code sections.

There were no further questions and the hearing was closed.

SENATE BILL NO. 112 Senator Devine is chief sponsor of this act to increase the minimum proof of financial responsibility from ten thousand dollars to twenty-five thousand dollars.

A motion of BE CONCURRED IN by Representative Baeth was seconded by Representative Seifert. Representative Lester stated this bill doesn't tie in with his bill which presently is in the Senate Judiciary and that it can go through without his bill. He stated he supports the motion.

Motion BE CONCURRED IN carried unanimously.

SENATE BILL NO. 78 Senator Greely is chief sponsor of this measure regulating financial support of candidates. Following brief discussion, the decision was made to defer action on this bill until more input can be obtained.

SENATE BILL NO. 123 Senator Roberts is chief sponsor of this act to provide definitions of sexual crimes by adding a definition of the term "without consent". Representative Lory moved BE CONCURRED IN. Motion carried unanimously with Representatives Meloy, Kimble, Yardley, Anderson, Hager and Day absent.

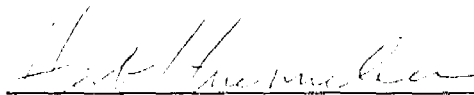
SENATE BILL NO. 93 Senator Turnage is chief sponsor of the act to revise tax appeals procedures and establishing provisions for so doing. Representative Moore stated he feels this is a fairly innocuous bill and moved to amend in the title, line 7, by striking "the assessment of costs on certain appeals, and interlocutory adjudications". Following brief discussion, a motion to amend carried unanimously.

Motion by Representative Moore of BE CONCURRED IN AS AMENDED carried unanimously with Representatives Meloy, Kimble, Yardley, Anderson, Hager and Day absent.

SENATE BILL NO. 201 Senator Turnage is chief sponsor. Chairman Huennekens stated the sole intent of the bill is to clarify interstate problem with third degree heirs. Frances Elge testified on this.

A motion by Representative Rasmussen of BE CONCURRED IN carried unanimously with Representatives Meloy, Kimble, Yardley, Anderson, Hager and Day absent.

Time ran out and the meeting adjourned
at 11:15 a.m.



Representative Herb Huennekens
Chairman

SENATE BILL NO. 123

INTRODUCED BY ROBERTS, CETRONE

A BILL FOR AN ACT ENTITLED: "AN ACT WHICH PROVIDES
DEFINITIONS OF SEXUAL CRIMES, BY ADDING A DEFINITION OF THE
TERM "WITHOUT CONSENT"; AMENDING SECTIONS 94-2-101 AND
94-5-501, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 94-2-101, R.C.M. 1947, is amended
to read as follows:

"94-2-101. General definitions. Unless otherwise
specified in the statute all words will be taken in the
objective standard rather than in the subjective.

(1) "Acts" has its usual and ordinary grammatical
meaning and includes any bodily movement, any form of
communication, and, where relevant, includes a failure or
omission to take action.

(2) "Another" means a person or persons as defined in
this code other than the offender.

(3) "Administrative proceeding" means any proceeding
the outcome of which is required to be based on a record or
documentation prescribed by law, or in which a law or a
regulation is particularized in its application to an
individual.

(4) "Benefit" means gain or advantage, or anything
regarded by the beneficiary as gain or advantage, including
benefit to any other person or entity in whose welfare he is
interested, but not an advantage promised generally to a
group or class of voters as a consequence of public measures
which a candidate engages to support or oppose.

(5) "Bodily injury" means physical pain, illness or any
impairment of physical condition and includes mental illness
or impairment.

(6) "Cohabit" means to live together under the
representation of being married.

(7) "Common scheme" means a series of acts or omissions
motivated by a purpose to accomplish a single criminal
objective, or by a common purpose or plan and which resulted
in the repeated commission of the same offense or affects
the same person or the same persons or the property thereof.

(8) "Conduct" means an act or series of acts, and the
accompanying mental state.

(9) "Conviction" means a judgment of conviction or
sentence entered upon a plea of guilty or upon a verdict or
finding of guilty of an offense, rendered by a legally
constituted jury or by a court of competent jurisdiction
authorized to try the case without a jury.

(10) "Correctional institution" means the state prison,
county or city jail, or other institution for the

REFERENCE BILL

1 incarceration or custody of persons under sentence for
2 offenses or awaiting trial or sentence for offenses.

3 (11) "Deception" means knowingly to:

4 (a) create or confirm in another an impression which is
5 false and which the offender does not believe to be true; or

6 (b) fail to correct a false impression which the
7 offender previously has created or confirmed; or

8 (c) prevent another from acquiring information
9 pertinent to the disposition of the property involved; or

10 (d) sell or otherwise transfer or encumber property,
11 failing to disclose a lien, adverse claim, or other legal
12 impediment to the enjoyment of the property, whether such
13 impediment is or is not of value or is not a matter of
14 official record; or

15 (e) promise performance which the offender does not
16 intend to perform or knows will not be performed. Failure to
17 perform standing alone is not evidence that the offender did
18 not intend to perform.

19 (12) "Defamatory matter" means anything which exposes a
20 person or a group, class or association to hatred, contempt,
21 ridicule, degradation or disgrace in society, or injury to
22 his or its business or occupation.

23 (13) "Deprive" means to withhold property of another:

24 (a) permanently; or

25 (b) for such a period as to appropriate a portion of

1 its value; or

2 (c) with the purpose to restore it only upon payment of
3 reward or other compensation; or

4 (d) to dispose of the property and use or deal with the
5 property so as to make it unlikely that the owner will
6 recover it.

7 (14) "Deviate sexual relations" means sexual contact or
8 sexual intercourse between two (2) persons of the same sex,
9 or any form of sexual intercourse with an animal.

10 (15) "Felony" means an offense in which the sentence
11 imposed upon conviction is death or imprisonment in the
12 state prison for any term exceeding one (1) year.

13 (16) "A frisk" is a search by an external patting of a
14 person's clothing.

15 (17) "Forcible felony" means any felony which involves
16 the use or threat of physical force or violence against any
17 individual.

18 (18) "Government" includes any branch, subdivision or
19 agency of the government of the state or any locality within
20 it.

21 (19) "Harm" means loss, disadvantage or injury, or
22 anything so regarded by the person affected, including loss,
23 disadvantage or injury to any person or entity in whose
24 welfare he is interested.

25 (20) "He, she, it." The singular term shall include the

plural and the masculine gender the feminine except where a particular context clearly requires a different meaning.

(21) "A house of prostitution" means any place where prostitution or promotion of prostitution is regularly carried on by one (1) person under the control, management or supervision of another.

(22) "Human being" means a person who has been born and is alive.

(23) "An illegal article" is an article or thing which is prohibited by statute, rule, regulation or order from being in the possession of a person subject to official detention.

(24) "Inmate" means a person who engages in prostitution in or through the agency of a house of prostitution.

(25) "Intoxicating substance" means any substance having an hallucinogenic, depressant, stimulating, or narcotic effect, taken in such quantities as to impair mental or physical capability including but not limited to any beverage containing one-half of one per centum (1/2 of 1%) or more of alcohol by volume; provided, that the foregoing definition shall not extend to dealcoholized wine, nor to any beverage or liquid produced by the process by which beer, ale, port or wine is produced, if it contains less than one-half of one per centum (1/2 of 1%) of alcohol

by volume.

(26) "An involuntary act" means any act which is:

(a) a reflex or convulsion; or

(b) a bodily movement during unconsciousness or sleep;

or

(c) conduct during hypnosis or resulting from hypnotic suggestion; or

(d) a bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.

(27) "Juror" means any person who is a member of any jury, including a grand jury, impaneled by any court in this state in any action or proceeding or by any officer authorized by law to impanel a jury in any action or proceeding. The term juror also includes a person who has been drawn or summoned to attend as a prospective juror.

(28) "Knowingly"--A person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when he is aware of his conduct or that the circumstance exists. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person is aware of a high probability of its existence. Equivalent terms such as "knowing" or "with knowledge" have the same meaning.

(29) "Mentally defective" means that a person suffers

1 from a mental disease or defect which renders him incapable
2 of appreciating the nature of his conduct.

3 (30) "Mentally incapacitated" means that a person is
4 rendered temporarily incapable of appreciating or
5 controlling his conduct as result of the influence of an
6 intoxicating substance.

7 (31) "Misdemeanor" means an offense in which the
8 sentence imposed upon conviction is imprisonment in the
9 county jail for any term, or fine, or both or the sentence
10 imposed is imprisonment in the state prison for any term of
11 one year or less.

12 (32) "Negligently"--A person acts negligently with
13 respect to a result or to a circumstance described by a
14 statute defining an offense when he consciously disregards a
15 risk that the result will occur or that the circumstance
16 exists; or if he disregards a risk of which he should be
17 aware that the result will occur or that the circumstance
18 exists. The risk must be of such a nature and degree that to
19 disregard it involves a gross deviation from the standard of
20 conduct that a reasonable person would observe in the
21 actor's situation. Gross deviation means a deviation that is
22 considerably greater than lack of ordinary care. Relevant
23 terms such as "negligent" and "with negligence" have the
24 same meaning.

25 (33) "Obtain" means:

1 (a) in relation to property, to bring about a transfer
2 of interest or possession, whether to the offender or to
3 another; and

4 (b) in relation to labor or services, to secure the
5 performance thereof.

6 (34) "Obtains or exerts control" includes but is not
7 limited to the taking, carrying away, or the sale,
8 conveyance, or transfer of title to, or interest in, or
9 possession of property.

10 (35) "Occupied structure" means any building, vehicle
11 or other place suited for human occupancy or night lodging
12 of persons or for carrying on business, whether or not a
13 person is actually present. Each unit of a building
14 consisting of two (2) or more units separately secured or
15 occupied is a separate occupied structure.

16 (36) "Offender" means a person who has been or is
17 liable to be arrested, charged, convicted or punished for a
18 public offense.

19 (37) "Offense" means a crime for which a sentence of
20 death or of imprisonment or fine is authorized. Offenses are
21 classified as felonies or misdemeanors.

22 (38) "Official detention" means imprisonment which
23 resulted from a conviction for an offense, confinement for
24 an offense, confinement of a person charged with an offense,
25 detention by a peace officer pursuant to arrest, detention

for extradition or deportation, or any lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society; but "official detention" does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

(39) "Official proceeding" means a proceeding heard or which may be heard before any legislative, judicial, administrative or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary or other person taking testimony or deposition in connection with such proceeding.

(40) "Other state" means any state or territory of the United States, the District of Columbia and the Commonwealth of Puerto Rico.

(41) "Owner" means a person, other than the offender, who has possession of or any other interest in the property involved, even though such interest or possession is unlawful, and without whose consent the offender has no authority to exert control over the property.

(42) "Party official" means a person who holds an elective or appointive post in a political party in the United States by virtue of which he directs or conducts, or

participates in directing or conducting party affairs at any level of responsibility.

(43) "Peace officer" means any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of his authority.

(44) "Pecuniary benefit" is benefit in the form of money, property, commercial interests or anything else the primary significance of which is economic gain.

(45) "Person" includes an individual, business association, partnership, corporation, government, or other legal entity, and an individual acting or purporting to act for or on behalf of any government or subdivision thereof.

(46) "Physically helpless" means that a person is unconscious or is otherwise physically unable to communicate unwillingness to act.

(47) "Possession" is the knowing control of anything for a sufficient time to be able to terminate control.

(48) "Premises" includes any type of structure or building and any real property.

(49) "Property" means anything of value. Property includes, but is not limited to, real estate, money, commercial instruments, admission or transportation tickets, written instruments representing or embodying rights concerning anything of value, labor, or services, or

1 otherwise of value to the owner; things growing on or
 2 affixed to, or found on land, or part of or affixed to any
 3 building; electricity, gas and water; birds, animals and
 4 fish, which ordinarily are kept in a state of confinement;
 5 food and drink, samples, cultures, microorganisms,
 6 specimens, records, recordings, documents, blueprints,
 7 drawings, maps, and whole or partial copies, descriptions,
 8 photographs, prototypes or models thereof, or any other
 9 articles, materials, devices, substances and whole or
 10 partial copies, descriptions, photographs, prototypes, or
 11 models thereof which constitute, represent, evidence,
 12 reflect or record secret scientific, technical,
 13 merchandising production or management information, designed
 14 process, procedure, formula, invention or improvement.

15 (50) "Property of another" means real or personal
 16 property in which a person other than the offender has an
 17 interest which the offender has not authority to defeat or
 18 impair, even though the offender himself may have an
 19 interest in the property.

20 (51) "Public place" means any place to which the public
 21 or any substantial group thereof has access.

22 (52) "Public servant" means any officer or employee of
 23 government, including but not limited to, legislators,
 24 judges, and firemen, and any person participating as a
 25 juror, advisor, consultant, administrator, executor,

1 guardian or court-appointed fiduciary; but the term does not
 2 include witnesses. The term public servant includes one who
 3 has been elected or designated to become a public servant.

4 (53) "Purposely"—A person acts purposely with respect
 5 to a result or to conduct described by a statute defining an
 6 offense if it is his conscious object to engage in that
 7 conduct or to cause that result. When a particular purpose
 8 is an element of an offense, the element is established
 9 although such purpose is conditional, unless the condition
 10 negatives the harm or evil sought to be prevented by the law
 11 defining the offense. Equivalent terms such as "purpose" and
 12 "with the purpose" have the same meaning.

13 (54) "Serious bodily injury" means bodily injury which
 14 creates a substantial risk of death or which causes serious
 15 permanent disfigurement, or protracted loss or impairment of
 16 the function or process of any bodily member or organ and
 17 includes serious mental illness or impairment.

18 (55) "Sexual contact" means any touching of the sexual
 19 or other intimate parts of the person of another for the
 20 purpose of arousing or gratifying the sexual desire of
 21 either party.

22 (56) "Sexual intercourse" means penetration of the
 23 vulva, anus or mouth of one person by the penis of another
 24 person, or penetration of the vulva or anus of one person by
 25 any body member of another person or penetration of the

1 vulva, or anus of one person by any foreign instrument or
 2 object manipulated by another person for the purpose of
 3 arousing or gratifying the sexual desire of either party.
 4 Any penetration, however slight, is sufficient.

5 (57) "Solicit" or "solicitation" means to command,
 6 authorize, urge, incite, request, or advise another to
 7 commit an offense.

8 (58) "State" or "this state" means the state of
 9 Montana, and all the land and water in respect to which the
 10 state of Montana has either exclusive or concurrent
 11 jurisdiction, and the air space above such land and water.

12 (59) "Statute" means any act of the legislature of this
 13 state.

14 (60) "Stolen property" means property over which
 15 control has been obtained by theft.

16 (61) "A stop" is the temporary detention of a person
 17 that results when a peace officer orders the person to
 18 remain in his presence.

19 (62) "Tamper" means to interfere with something
 20 improperly, meddle with it, make unwarranted alterations in
 21 its existing condition, or deposit refuse upon it.

22 (63) "Threat" means a menace, however communicated to:

23 (a) inflict physical harm on the person threatened or
 24 any other person or on property; or

25 (b) subject any person to physical confinement or

1 restraint; or

2 (c) commit any criminal offense; or

3 (d) accuse any person of criminal offense; or

4 (e) expose any person to hatred, contempt or ridicule;

5 or

6 (f) harm the credit or business repute of any person;

7 or

8 (g) reveal any information sought to be concealed by
 9 the person threatened; or

10 (h) take action as an official against anyone or
 11 anything, or withhold official action, or cause such action
 12 or withholding; or

13 (i) bring about or continue a strike, boycott, or other
 14 similar collective action if the property is not demanded or
 15 received for the benefit of the groups which he purports to
 16 represent; or

17 (j) testify or provide information or withhold
 18 testimony or information with respect to another's legal
 19 claim or defense.

20 (64) (a) "Value" means the market value of the property
 21 at the time and place of the crime, or if such cannot be
 22 satisfactorily ascertained, the cost of the replacement of
 23 the property within a reasonable time after the crime. If
 24 the offender appropriates a portion of the value of the
 25 property, the value shall be determined as follows:

1 (i) The value of an instrument constituting an evidence
2 of debt, such as a check, draft or promissory note, shall be
3 deemed the amount due or collectible thereon or thereby,
4 such figure ordinarily being the face amount of the
5 indebtedness less any portion thereof which has been
6 satisfied.

7 (ii) The value of any other instrument which creates,
8 releases, discharges, or otherwise affects any valuable
9 legal right, privilege or obligation shall be deemed the
10 amount of economic loss which the owner of the instrument
11 might reasonably suffer by virtue of the loss of the
12 instrument.

13 (b) When it cannot be determined if the value of the
14 property is more or less than one hundred fifty dollars
15 (\$150) by the standards set forth in subsection (64) (a)
16 above, its value shall be deemed to be an amount less than
17 one hundred fifty dollars (\$150).

18 (c) Amounts involved in thefts committed pursuant to a
19 common scheme or the same transaction, whether from the same
20 person or several persons, may be aggregated in determining
21 the value of the property.

22 (65) "Vehicle" means any device for transportation by
23 land, water or air, or mobile equipment with provision for
24 transport of an operator.

25 (66) "Weapon" means any instrument, article or

1 substance which, regardless of its primary function, is
2 readily capable of being used to produce death or serious
3 bodily injury.

4 (67) "Witness" means a person whose testimony is
5 desired in any proceeding or in any investigation by a grand
6 jury or in a criminal action, prosecution or proceeding."

7 ~~(68) "Without consent" means:~~

8 ~~(a) the victim is compelled to submit by force or by~~
9 ~~threat of imminent death, bodily injury, or kidnaping, to be~~
10 ~~inflicted on anyone; or~~

11 ~~(b) the victim is incapable of consent because he is:~~

12 ~~(i) mentally defective or incapacitated; or~~

13 ~~(ii) physically helpless; or~~

14 ~~(iii) less than sixteen (16) years old.~~

15 Section 2. Section 94-5-501, R.C.M. 1947, is amended
16 to read as follows:

17 "94-5-501. Definitions. (1) In this part, unless a
18 different meaning plainly is required, the definitions given
19 in chapter 2, 94-2-101 apply.

20 (2) As used in sections 94-5-503 and 94-5-505 the term
21 "without consent" means:

22 (a) the victim is compelled to submit by force or by
23 threat of imminent death, bodily injury, or kidnaping to be
24 inflicted on anyone; or

25 (b) the victim is incapable of consent because he is:

- 1 (i) mentally defective or incapacitated; or
- 2 (ii) physically helpless; or
- 3 (iii) less than sixteen (16) years old."

-End-